

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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Friday, August 26, 2005

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The Commission convened in Room 540 at 624 Ninth Street, N.W., Washington, D.C. at 9:30 a.m., Gerald A. Reynolds, Chairperson, presiding.

PRESENT:

GERALD A. REYNOLDS, Chairperson
ABIGAIL THERNSTROM, Vice Chairperson
JENNIFER C. BRACERAS, Commissioner (via
telephone)
PETER N. KIRSANOW, Commissioner
ASHLEY L. TAYLOR, JR., Commissioner
MICHAEL YAKI, Commissioner
KENNETH L. MARCUS, Staff Director

STAFF PRESENT:

JOHN BLAKELEY
TERESA BROOKS
CHRISTOPHER BYRNES
DEBRA CARR, ESQ., Associate Deputy Staff Director
IVY DAVIS, Director ERO/Acting Chief Regional Programs
Coordination Unit
BARBARA DELAVIEZ
TERRI DICKERSON, Assistant Staff Director
PAMELA A. DUNSTON, Chief, Administrative Services and
Clearinghouse Division
BARBARA FONTANA
GEORGE M. HARBISON, Director, Human Resources Division
Acting Chief, Budget and Finance Division
SETH JAFFE
SOCK-FOON MACDOUGALL
TINALOUISE MARTIN, Director for Management, Office
of Management
EMMA MONROIG, Solicitor/Parliamentarian

COMMISSIONER ASSISTANTS PRESENT:

CHRISTOPHER JENNINGS
LISA NEUDER
KIMBERLY SCHULD (via telephone)

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P-R-O-C-E-E-D-I-N-G-S

9:36 a.m.

CHAIRMAN REYNOLDS: Okay. The meeting will come to order.

This meeting is taking place in the Commission's Washington D.C. headquarters. Commissioner Braceras is participating telephonically.

In response to a request from the State Advisory Committee members there is a special telephone connection for members of the public to listen into this meeting. This is done at this meeting as an accommodation because the Commissioners may discuss or will discuss some matters in which State Advisory Committee members have expressed particular interest, but it will not be done on a regular basis because of the expense involved.

This is a continuation of the meeting of July 22, 2005 that was recessed without concluding all the items on the agenda. On July 22nd we covered a number of items, including our announcements, the Staff Director's report, passage of our annual enforcement report and approval of our proposed budget for fiscal year 2007.

The meeting will resume with item VI Management and Operations. But before starting on that

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1 topic, I just want to mention that Commissioner
2 Braceras participated in an event, I believe
3 yesterday, Jennifer, at the National Press Club?

4 COMMISSIONER BRACERAS: Yes.

5 CHAIRMAN REYNOLDS: And I believe at least
6 one media source indicated that the U.S. Commission on
7 Civil Rights had taken a position with respect to the
8 nomination of --

9 COMMISSIONER BRACERAS: Oh, really?

10 CHAIRMAN REYNOLDS: Yes.

11 COMMISSIONER BRACERAS: I was very clear
12 that I was there in my individual capacity.

13 CHAIRMAN REYNOLDS: I have no doubt. I
14 just want to go on the record that Commissioners are
15 free to express their views on any and all issues in
16 their personal capacities. And yesterday Commissioner
17 Braceras exercised that right and the comments that
18 she made yesterday, while I agree with them personally
19 they were not made in any official capacity.

20 COMMISSIONER BRACERAS: No, they certainly
21 were not. I apologize. I did, I stated from the
22 outset and again during the question and answer period
23 that I was there in my individual capacity. And the
24 Commission was listed as one of several organizations
25 with which I'm affiliated or which I work for. So it

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1 was only used to identify what my jobs are and who I
2 am. But I made very clear that the only group I was
3 there representing officially was the Independent
4 Womens Group.

5 So, I apologize for that.

6 CHAIRMAN REYNOLDS: Well, no. There's no
7 apology needed. You didn't do anything wrong.

8 COMMISSIONER BRACERAS: Well, I don't
9 think I did.

10 CHAIRMAN REYNOLDS: Okay. I mention this
11 only to --

12 COMMISSIONER BRACERAS: Hello.

13 CHAIRMAN REYNOLDS: Hello, Jennifer?

14 COMMISSIONER YAKI: The brunch has begun
15 at the Braceras' residents.

16 COMMISSIONER BRACERAS: No, I don't know
17 what that is.

18 CHAIRMAN REYNOLDS: Oh, that's not on your
19 end?

20 COMMISSIONER BRACERAS: No, it's somebody
21 else's conference call.

22 CHAIRMAN REYNOLDS: Okay. Let's pause.
23 Let's adjourn until we straighten this mess out.

24 (Whereupon, at 9:39 a.m. off the record
25 until 9:46 a.m.)

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1
2 **VI. Management and Operations**

3 CHAIRMAN REYNOLDS: Okay. Where were we?
4 Management and Operations.

5 VICE CHAIR THERNSTROM: Well, you were
6 saying, which is correct, that no apologies are needed
7 from Commissioner Braceras. The apology that is
8 needed is from CNN and any other media outlet that
9 misreported this.

10 CHAIRMAN REYNOLDS: Abby, if that's the
11 standard, that's going to cause problems because the
12 media gets it wrong on a regular basis, so --

13 VICE CHAIR THERNSTROM: I understand that.
14 But I'm just saying we do not hold Commissioner
15 Braceras responsible here.

16 CHAIRMAN REYNOLDS: Right. Okay. Back to
17 Management and Operations. Some items in this section
18 were already covered, such as approval of the 2007
19 budget. We will now deal with those items that have
20 not yet been addressed, specifically financial
21 corrective actions and Web site management.

22 Over the last several months several of us
23 have made the sacrifice of not hiring special
24 assistants for this fiscal year in order to bring our
25 fiscal house in order. The question has arisen as to

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1 whether we would refrain from hiring new commissioner
2 assistants for 2006. The Staff Director has advised
3 that we have now reached the point in light of recent
4 staff attrition where we would be able to defer
5 closure of our Denver and Kansas City offices until
6 fiscal year 2007 if we continue to refrain from hiring
7 commission special assistants through fiscal year 2006
8 as long as we receive approximately the level of
9 appropriations recently passed by the House of
10 Representatives.

11 Could I have a motion to retain the hiring
12 freeze on Commission special assistants through fiscal
13 year 2006.

14 VICE CHAIR THERNSTROM: So moved.

15 COMMISSIONER KIRSANOW: Second.

16 CHAIRMAN REYNOLDS: Okay. Discussion?

17 COMMISSIONER KIRSANOW: I mean I have a
18 special assistant, obviously, but I just wanted to
19 make sure that everybody is comfortable with the fact
20 that the Chair, Commissioner Yaki, Commissioner Taylor
21 would not be having special assistants?

22 VICE CHAIR THERNSTROM: Let me speak to
23 one aspect of that. My special assistant is
24 functioning as I am sharing her with Commissioner
25 Taylor. And to the extent to which the Chair needs

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1 her, she is also working for the Chair. So I have
2 spread my -- I've shared the wealth, as it were, in
3 asking her to do this.

4 CHAIRMAN REYNOLDS: Well, I'm not
5 comfortable with it, but this is where we find
6 ourselves. It makes my life a lot more difficult, and
7 I suspect that the same is true for the other
8 Commissioners who don't have a special assistant, but
9 this is the sacrifice that should be made so that we
10 can avoid reductions in staff and office closures for
11 2006.

12 Again, the game plan is to get our house
13 in order to put out some good reports, do some good
14 work and demonstrate that this agency is capable of
15 functioning in an effective manner. And at that point
16 we're going to put out our hand and say we need some
17 more money. And I say that as someone who is not all
18 enamored with the notion of big government. If we're
19 going to have the Commission, I think that the
20 Commission needs to receive a sufficient amount of
21 funds to effectively do its mission.

22 So, at that point, I guess unless there
23 are no other comments, we'll vote.

24 All in favor?

25 ALL: Aye.

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1 CHAIRMAN REYNOLDS: All opposed? Okay.

2 It passes unanimously.

3 Next we move on to deferral of the
4 regional office closures. May I have a motion to
5 postpone the regional office closures?

6 COMMISSIONER YAKI: So moved.

7 CHAIRMAN REYNOLDS: A second?

8 COMMISSIONER BRACERAS: Second.

9 CHAIRMAN REYNOLDS: Thank you.
10 Discussion? Commissioner Kirsanow?

11 COMMISSIONER KIRSANOW: I'd like to ask
12 the staff. I think we had this discussion in, maybe it
13 was the June meeting but I wanted to be clear as to
14 what the ramifications of this deferral are.

15 My recollection is that reframing from
16 hiring special assistants gives us a little bit of the
17 cushion necessary for this deferral, but it doesn't
18 vanquish the problem and it may be something that
19 needs to be revisited sometime in 2007. Is that
20 correct?

21 STAFF DIRECTOR MARCUS: That's correct,
22 Commissioner Kirsanow. Given the recent attrition, we
23 now project that the appropriations amount that the
24 House bill includes would provide us with enough money
25 to continue operations through 2006 as long as we

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1 don't have special assistants and we would still be
2 able to bring on a few additional people. We're
3 thinking of general counsel and a couple of people in
4 procurement and a budget and finance officer. We
5 project that we would be fine until the end of 2006.
6 However, unless we receive a greater amount of
7 appropriations for 2007, we are projecting that we
8 would have a problem again during that year.

9 COMMISSIONER KIRSANOW: And then --

10 COMMISSIONER BRACERAS: I'm sorry. I
11 think there's static over the phone. I'm sorry to
12 interrupt. I'm getting some interface. I don't know
13 if it's that cross talk again or it's somebody
14 whispering in their microphone, but --

15 VICE CHAIR THERNSTROM: I'm sorry,
16 Jennifer. I believe that was me and I'm terribly
17 sorry. It did not occur to me that, of course, my
18 mike is on.

19 COMMISSIONER BRACERAS: Oh, I'm sorry. I
20 couldn't hear what was being said.

21 VICE CHAIR THERNSTROM: Okay. No, I
22 apologize.

23 COMMISSIONER BRACERAS: Okay. Thanks.

24 STAFF DIRECTOR MARCUS: For Commissioner
25 Kirsanow's benefit, let me just reiterate that we are

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1 projecting that as long as the Commissioners refrain
2 from hiring special assistants through the end of
3 2006, the 2006 House Appropriations figure should be
4 sufficient to allow us to continue operations through
5 2006 and still be able to bring on a few additional
6 staff members. And we're projecting new hires in the
7 areas of the procurement and budget and finance and to
8 general counsel. However, assuming that the salaries
9 of federal workers continue to rise, we would still
10 run into a problem in 2007.

11 COMMISSIONER KIRSANOW: And the
12 continuation of the operations presumes the
13 incorporation of our ability to continue to discharge
14 our reports?

15 STAFF DIRECTOR MARCUS: That's right.

16 COMMISSIONER KIRSANOW: Okay. Is there
17 any kind of compromise of those reports by virtue of
18 the attrition that we've experienced?

19 STAFF DIRECTOR MARCUS: We've experienced
20 attrition over the last decade, and we certainly do
21 not have the capacity to product the number or
22 complexity of reports today that we were able to do
23 five or ten years ago. I don't know that there's a
24 significant difference in our projected ability to
25 complete reports in 2006 as compared to 2005. But we

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1 certainly will continue to be in a very tight
2 financial situation both with respect to national
3 reports and also with respect to our regional and
4 State Advisory Budget. So we'll be very tight.

5 CHAIRMAN REYNOLDS: I'd just like to add I
6 agree with everything the Staff Director said, but I'd
7 like to add that our problem is a structural problem
8 and it does not go away. We face this issue year after
9 year. And basically we're in a vise. Every year
10 salaries go up and our budget remains, more or less,
11 the same. And so every year we're going to have to
12 deal with these fiscal issues.

13 What we have on the table today is a fix;
14 it's a temporary fix and it will get us through 2006
15 without having to close offices or to have a reduction
16 in force. But the problem will remain so long as we
17 have flat budget while expenditures increase.

18 Vice Chair Thernstrom?

19 VICE CHAIR THERNSTROM: Well, there is
20 going to be a motion down the road here that we shift
21 to more briefings and fewer reports, and we'll discuss
22 that at the time the motion is made. But I assume that
23 that will mean some savings to us; that briefings and
24 posting the briefings and posting Commissioners'
25 responses to those briefings is a savings over having

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1 to put out reports, when really given our staff
2 limitations here we would need to be contracting work
3 and so forth.

4 STAFF DIRECTOR MARCUS: The way I would
5 put it is that the shift from a report model to a
6 briefing model if that's what's voted on today, would
7 give us greater budget flexibility. It would give us
8 greater flexibility in the event that we have either
9 increases or decreases.

10 The greatest part of our expense in terms
11 of putting together a report is staff time. Briefings
12 can be done with either less or more staff time, which
13 is to say they can be very complex briefings that have
14 a lot of staff involved or they could be more
15 streamline. So a shift to briefings, if that's what
16 we're going to do, would give us greater flexibility
17 in that regard.

18 CHAIRMAN REYNOLDS: Well, when I think
19 about it, it seems to me that salaries are salaries.
20 It's a fixed cost. And whether we do briefings or do a
21 gazillion reports, it really doesn't make a difference
22 if the primary cost is salaries.

23 For me, the benefit of doing this is that
24 we can get more content out, we can bring in experts
25 who have already done the work. I don't view this as a

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1 means to achieve significant cost savings since
2 we're not going to RIF. The salaries that we had
3 today are the salaries that we'll have through 2006.

4 COMMISSIONER BRACERAS: May I ask a
5 question?

6 CHAIRMAN REYNOLDS: Yes.

7 COMMISSIONER BRACERAS: Why have we
8 decided to prioritize keeping other offices open over
9 producing reports? In other words --

10 CHAIRMAN REYNOLDS: Well, I don't view it
11 that way. I don't believe that the shift to more
12 briefings is a --

13 COMMISSIONER BRACERAS: I'm going to shift
14 to more briefings, but as I understood the way this
15 was framed is that because of the attrition in staff
16 we really don't have enough people to do as many high
17 quality written reports as we did in the past, and
18 we're not going to be replacing people because we want
19 to keep offices open.

20 So I guess I'm asking how that choice was
21 made and just what the analysis is and the pros and
22 cons of that. Because it seems to me that without
23 having further information I would come down more on
24 the side of hiring people at headquarters to do
25 reports than keeping offices open. And I know there's

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1 a whole host of political considerations and the
2 members of Congress in those areas are up in arms.
3 But putting aside the politics of it, on the merits I
4 think that it's more valuable for our organization to
5 be putting out reports than just to be having offices.

6 CHAIRMAN REYNOLDS: Well, Jennifer, again
7 I view those two issues separately. I believe that
8 the briefings, for me doing more briefings will not
9 result in a significant cost savings. And I don't
10 view it as a method for increasing our fiscal
11 stability.

12 COMMISSIONER BRACERAS: I understand that
13 part. It's just that the way the Staff Director keyed
14 up the issue of the attrition and the ability to
15 replace, it seemed to me that that's the way it was
16 keyed up. Did I misunderstand him?

17 CHAIRMAN REYNOLDS: Well, we will be
18 hiring people during 2006. But, Ken, jump in there.

19 STAFF DIRECTOR MARCUS: Commissioner
20 Braceras, I don't think you entirely misunderstood.
21 There is a connection, of course, between the regional
22 offices and reports in a sense that staff in the
23 regional offices are involved in preparing State
24 Advisory Committee reports.

25 COMMISSIONER BRACERAS: I know. I

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1 understand that. But that brings us to another
2 problem which we'll discuss later, which is that the
3 Commission headquarters in Washington has very little
4 control over either the content or the quality of
5 those reports. And basically, as I've understood
6 things, we have only voted to accept or reject the
7 reports that they submit to us based on whether or not
8 the proper procedures were used to put out the
9 reports. So in other words, we've had no ability to
10 reject a report based on what we believe to be either
11 poor quality or inappropriate findings of fact or
12 inappropriate recommendations.

13 And so I guess I'm wondering what the
14 better value for our money is, whether it's to have a
15 decentralized system where we have very little control
16 or a more centralized system where we have more
17 control, not simply over the topic and the content but
18 over the quality. And I know that comes under the
19 heading of SAC reform, but in terms of this discussion
20 and in terms of the budget it seems to me that a
21 decision has been made to allow us to remain open even
22 if that's at the expense of us having resources at
23 headquarters to do our own reports. Is that correct?

24 CHAIRMAN REYNOLDS: Well, okay. I guess I
25 have a better understanding of where you're going.

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1 Speaking just for myself, I think that
2 staff has basically been absorbing the cost associated
3 with the structural deficit. Each year the head count
4 is reduced. Hell, I understand at one point that we
5 had 200 employees. Every year we lose more and more
6 employees. And I think that the Commissioners making
7 a sacrifice by refraining from hiring special
8 assistants, I think that it's time for the
9 Commissioners, in my view, to suffer some of the pain.

10 COMMISSIONER BRACERAS: No, I understand
11 that. And, again, maybe I completely misunderstood.
12 But I thought that the Staff Director had raised the
13 issue of attrition amongst, not special assistants but
14 regular Commission staff.

15 CHAIRMAN REYNOLDS: Yes.

16 COMMISSIONER BRACERAS: And I thought that
17 he had said we were not currently in the process of
18 replacing people in order so that we could be able to
19 keep regional offices open. Am I totally wrong that
20 that's what he said?

21 STAFF DIRECTOR MARCUS: I would not put it
22 in exactly that way, Commissioner.

23 COMMISSIONER BRACERAS: Okay. Correct me
24 then.

25 STAFF DIRECTOR MARCUS: Well, we've had

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1 attrition over a period of years. And in response to
2 Commissioner Kirsanow's question I addressed not just
3 the attrition over the last few months, but the
4 attrition over a longer period of time. Some of the
5 attrition we've been able to compensate for by
6 backfilling positions. Most of it we have not been.

7 For instance, we recently lost our
8 information technology professional and webmaster. We
9 will need to replace him, and we will replace him.
10 But most of the attrition we have not been able to
11 replace --

12 COMMISSIONER BRACERAS: Because of budget
13 reasons?

14 STAFF DIRECTOR MARCUS: Because of budget
15 reasons.

16 COMMISSIONER BRACERAS: Right.

17 STAFF DIRECTOR MARCUS: Now, it is true
18 that there is a policy decision to be made to the
19 extent that when we close an office we save both
20 salary money and leasing money. We could have a
21 greater number of analysts in headquarters if we have
22 office --

23 COMMISSIONER BRACERAS: Right. Yes.
24 That's a good point. And my only question at this
25 juncture wasn't really to open up the merits of that,

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1 but was just to ask has that decision been made or
2 is that something -- I just sort of forgot where we
3 are with that?

4 I got the impression from what you said,
5 Ken, that you had made that choice and I just wanted
6 clarification on whether that choice had already been
7 made or whether that's something we're being asked to
8 decide.

9 STAFF DIRECTOR MARCUS: I would not say
10 that I've made that choice. I would say that the
11 question of whether to keep the offices open has been
12 discussed by the working group on the budget. And I
13 thought that there was a consensus there. It has not
14 yet been discussed by the Commissioners. And so that
15 decision is up for discussion right now.

16 As for backfilling some of the other
17 attrition, I suppose that's something that I would
18 have to look at in connection with the decision that's
19 made by the Commission during today's meeting.

20 COMMISSIONER BRACERAS: Yes. I'm not sure
21 there was a consensus on the working group on that
22 issue.

23 CHAIRMAN REYNOLDS: Okay. Vice Chair
24 Thernstrom?

25 VICE CHAIR THERNSTROM: I just want to,

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1 just for clarification purposes, restate the
2 correction I had before which is, Mr. Chairman, you
3 said salaries are salaries and those are fixed costs.
4 But if we're short on a staff as a consequence of
5 attrition, we can't because of budgetary constraints
6 fill positions that are now empty; my question was
7 simply are there not additional savings from holding
8 briefings over putting out the kind of full scale
9 reports that we had in the past? Because those full
10 scale reports certainly would require either
11 additional staff or contracting work out.

12 CHAIRMAN REYNOLDS: Okay. I think that
13 we're dancing around a nuance.

14 VICE CHAIR THERNSTROM: Okay.

15 CHAIRMAN REYNOLDS: The way I view it is
16 that the shift to briefings increase productivity.

17 VICE CHAIR THERNSTROM: Okay.

18 CHAIRMAN REYNOLDS: But it doesn't
19 increase our budget. It doesn't bring us more money.
20 It doesn't reduce the money we have.

21 COMMISSIONER YAKI: It's more bang for the
22 buck?

23 CHAIRMAN REYNOLDS: Yes.

24 VICE CHAIR THERNSTROM: It's more bang for
25 the existing. Okay. Anyway, it was just a

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1 clarification because of what you said before.

2 Let's move on.

3 CHAIRMAN REYNOLDS: Okay. And, Jennifer,
4 whether we have a consensus I believe that this vote
5 will decide that issue.

6 Any additional comments?

7 STAFF DIRECTOR MARCUS: Mr. Chairman, I
8 think it is worth on the record having some
9 clarification of the time table. Because I don't know
10 that the motion was specifically clear.

11 I believe that the motion was to defer
12 closure of these two offices until fiscal year 2007.

13 CHAIRMAN REYNOLDS: 2007. Yes.

14 STAFF DIRECTOR MARCUS: Is that the intent
15 of the motion?

16 CHAIRMAN REYNOLDS: Yes.

17 STAFF DIRECTOR MARCUS: Okay. Thank you.

18 CHAIRMAN REYNOLDS: Okay. Unless there
19 are other comments or questions, we'll vote now.

20 All in favor?

21 ALL: Aye.

22 CHAIRMAN REYNOLDS: All in opposition?

23 COMMISSIONER BRACERAS: I'd like to
24 abstain.

25 CHAIRMAN REYNOLDS: Okay. Please let the

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1 record reflect that Commissioner Braceras has
2 abstained.

3 Next up?

4 COMMISSIONER BRACERAS: Again, just to
5 clarify for the reasons that I'm not sure about the
6 resources as opposed to hiring more staff people in
7 Washington.

8 CHAIRMAN REYNOLDS: Okay. Next up is the
9 deferral --

10 VICE CHAIR THERNSTROM: Go ahead.

11 CHAIRMAN REYNOLDS: Okay. All right. May
12 I have a motion to postpone the regional office
13 closures?

14 VICE CHAIR THERNSTROM: So moved.

15 CHAIRMAN REYNOLDS: May I have a second.

16 COMMISSIONER BRACERAS: Well, didn't we
17 just do that? What did we just vote on?

18 CHAIRMAN REYNOLDS: No. That was for --
19 oh, I'm sorry.

20 VICE CHAIR THERNSTROM: We did. We did.

21 CHAIRMAN REYNOLDS: I'm sorry. I need to
22 flip the page. Thanks.

23 VICE CHAIR THERNSTROM: I'm not thinking
24 either.

25 CHAIRMAN REYNOLDS: Thanks, Jennifer.

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1 Okay. Next up is Web site management.
2 May I have a motion to post the July 5th letter by
3 Commissioners Thernstrom, Braceras, Kirsanow, Taylor
4 and me to the Secretary of Education on the Commission
5 Web site.

6 VICE CHAIR THERNSTROM: So moved.

7 CHAIRMAN REYNOLDS: Is there a second?

8 COMMISSIONER KIRSANOW: Second.

9 CHAIRMAN REYNOLDS: Discussion? Okay.
10 All in favor?

11 ALL: Aye.

12 CHAIRMAN REYNOLDS: Any in opposition?
13 The motion passes unanimously.

14 Next up may I have a motion that the
15 letter from Commissioner Yaki to the Secretary of
16 Education be posted to the Commission Web site?

17 VICE CHAIR THERNSTROM: So moved.

18 CHAIRMAN REYNOLDS: Is there a second?

19 COMMISSIONER KIRSANOW: Second.

20 CHAIRMAN REYNOLDS: Discussion? All in
21 favor?

22 ALL: Aye.

23 CHAIRMAN REYNOLDS: All opposed?

24 CHAIRMAN REYNOLDS: The motion passes
25 unanimously.

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VII. State Advisory Committee Issues

CHAIRMAN REYNOLDS: Okay. At this point I would like to announce that the New Mexico State Advisory Committee report entitled "The Farmington Report: Civil Rights for Native Americans 30 Years Later" and the Arizona State Advisory Committee entitled "Civil Rights Along the U.S. Mexican Border: A Need for Immigration Reform" that were sent to the Commissioners for review will be considered at the September Commission meeting. This is in accordance with the policy of administrative instruction 5.7 and section 13.02 that Commissioners will receive SAC reports two months before taking action on them.

What's next?

VICE CHAIR THERNSTROM: Working group.

CHAIRMAN REYNOLDS: Yes. May I have a motion to establish a working group on State Advisory Committees? Pretty please?

COMMISSIONER YAKI: Is that a parliamentary motion?

CHAIRMAN REYNOLDS: It's in the appendix of *Robert's Rules*.

VICE CHAIR THERNSTROM: Mr. Chairman, I so move. But I do think that the entire motion needs to

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1 be read.

2 I move that the Commission establish a
3 working group on State Advisory Committees. The
4 mission of the working group on State Advisory
5 Committees will be to make specific recommendations to
6 the full Commission for implementing the State
7 Advisory Committee administrative and policy reforms
8 which may include: Rechartering of the State Advisory
9 Committees; State Advisory Committee member selection;
10 Commissioner involvement in State Advisory Committee
11 activities; cost effective ways to conduct State
12 Advisory Committee management and operations.

13 CHAIRMAN REYNOLDS: Okay. Is there a
14 second?

15 COMMISSIONER YAKI: Second.

16 CHAIRMAN REYNOLDS: Discussion?

17 COMMISSIONER YAKI: Question, Mr.
18 Chairman. How does this relate to the subsequent
19 motion on membership criteria if it talks about
20 membership selection in this motion?

21 CHAIRMAN REYNOLDS: Well, assuming that
22 the second motion passes, the Working Group Committee
23 will get together and work through all of the issues
24 associated with the topic.

25 STAFF DIRECTOR MARCUS: If I may further

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1 clarify, the motion to be discussed later deals with
2 State Advisory Committee member selection criteria.
3 There may be other issues relating to membership
4 selection procedures, so on and so forth, that are not
5 otherwise subject to a vote today.

6 COMMISSIONER YAKI: Mr. Chairman, I think
7 that we're doing a little parsing here. And I would
8 say that if we're going to be doing a working group on
9 State Advisory Committees, we should include in that
10 rather than preclude any options, we should include in
11 that the discussion of criteria and term limitations.

12 I think that if I would read this correctly, and
13 maybe I'm not, that the working group on State
14 Advisory Committees might actually meet with
15 individuals from State Advisory Committees to seek
16 their input and their feedback on any changes or
17 criteria that we will be looking at. And I think that
18 it would be very incongruous for us given our charter
19 and our history to just engage in top down decrees
20 with regard to the State Advisory Committees, which
21 are a part of our congressional charter, have been
22 part of the historic mission of the Commission for
23 many years. And I would want to amend that the motion
24 include consideration of the membership criteria and
25 the term limitations and defer those two items as

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1 actual votes until this working group reports back.

2 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

3 VICE CHAIR THERNSTROM: Well, are there
4 any time constraints here that make that postponement
5 problematic?

6 CHAIRMAN REYNOLDS: Well, I just want to
7 get some time to have some time to absorb this.

8 I guess my first comment is that reading
9 the motion that Vice Chair Thernstrom read, I didn't
10 see that as limiting the working group's ability to
11 interact with members of SACs, to get input from SACS
12 and other folks.

13 Now, the other questions, I think that
14 that causes a problem because we have a backlog. And,
15 you know, when the Commission was reconstituted we had
16 a backlog and it's just grown since then. I think
17 that we should vote to amend the selection criteria as
18 soon as possible so that we can start working on the
19 backlog.

20 We've had a teleconference with SAC
21 chairs. We've gotten their input. And, you know,
22 it's not clear to me that there's going to be new
23 arguments and new evidence provided the working group
24 that would alter any minds.

25 COMMISSIONER YAKI: May I respond?

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1 CHAIRMAN REYNOLDS: Yes.

2 COMMISSIONER YAKI: I understand what you
3 said, but what you said to me precisely goes to the
4 point that I'm making.

5 First of all, I mean an old politician so
6 you got to forgive me for this. But it seems to me
7 that with regard to the backlog, that by changing the
8 criteria I don't see we're doing anything more than
9 just simply adding to the backlog. All the committees
10 that have submitted their membership and are in line
11 right now at the Commission are going to have to go
12 back and redo that. All the other people who along
13 the way for there, are going to have to go back and do
14 that.

15 I, quite frankly, given I think the
16 importance that this Commission is placing upon this
17 reform effort, I don't see why we couldn't make some
18 sort of provision -- I wouldn't call it a deal -- but
19 a provision that would provide for one year renewals
20 of these charters just to get them out of the way
21 while we go through the process of looking at
22 revisions, if they are warranted, to the State
23 Advisory Committees. Because I just think that one of
24 the things you're going to find is that the imposition
25 of term limit issue is very vague because if there are

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1 people on there who are serving ten years and have
2 been just nominated for a new term, many of those
3 people are in the leadership of the state chairs. And
4 if we adopt that, they go or maybe they don't go. I
5 don't know. I don't know if it means if they have
6 been nominated, they get to complete it or not. But
7 if they do go, then you have lost institutional memory
8 in terms of being able to move the machinery to get
9 those charters back up in a timely manner.

10 And I just think, I understand that the
11 majority on this Commission wants to look at
12 reforming, relooking at -- Commissioner Braceras has
13 made it very clear that she has very strong views on
14 this -- the SACs. But I think that to do that and at
15 the same time -- I think that there's a transparency
16 issue here and an openness issue here that I think
17 would be undermined if in one motion we say we're
18 doing a working group of State Advisory Committees to
19 look at all these different questions and on the other
20 hand we're saying oh, and by the way, for all you
21 State Advisory Committees this is a new membership
22 criteria that we decided we're going to do.

23 And with all due respect, there was a
24 phone call about this. But this phone call was in
25 response to the fact that the State Advisory chairs

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1 had absolutely not notice that this thing was coming
2 up on the agenda. And it was through a lot of sabre
3 rattling by them, by myself, by the members of the
4 Congressional Black Caucus, the Asian-Pacific American
5 Caucus, the Hispanic Caucus, the Disability Caucus and
6 the Women's Caucus on Capitol Hill who sent us a
7 letter asking us to defer any of these decisions for
8 further study. And I think that the further study is
9 embodied in the first motion. So why preempt what
10 could be a more complete package of reforms by
11 approving the second two, which I think will simply
12 engender hostility and suspension between any
13 participating SAC members and the working group on
14 reform? I don't think it'll get anything done. I
15 think that the SAC chairs who have any contact with me
16 and have been working Capitol Hill are going to, for
17 lack of a better word, go nuts over the idea that
18 there's a working group that we've established, but at
19 the same time we've also said to them by the way, we
20 want you to work with us but we're throwing back the
21 entire membership in your face right now and we're
22 doing term limits, and we don't know how that's going
23 to impact you. But, sorry, that's the way we're going
24 to do.

25 I just think that there's a better way of

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1 doing it. And I think a combined motion that looks
2 at all these things maybe with provisional approval of
3 one year charters for these other organizations
4 pending the resolution of the working group would be a
5 more effective compromise that creates transparency,
6 that creates openness and provides integrity to this
7 process.

8 COMMISSIONER BRACERAS: This is
9 Commissioner Braceras.

10 So, Michael, if I hear you correctly, your
11 proposal is to establish the working group but to
12 retire everybody now and let the working group sort
13 out the other issues?

14 COMMISSIONER YAKI: Well, I would say I
15 mean we meet once a month. We have a lot of things on
16 the calendar. We already found last month that
17 combining a briefing and large amounts of work
18 resulted in having a continuation meeting and
19 including one over the phone, which no one was happy
20 about.

21 COMMISSIONER BRACERAS: Right.

22 COMMISSIONER YAKI: It just seems to me
23 that it isn't that -- it actually would probably work
24 out better for us in terms of -- at least my opinion.

25 I'm not speaking on behalf of the entire Commission.

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1 But given the workload that we're going
2 on and the fact that we may have briefings in
3 September and October, January and February which will
4 entail work. As the Staff Director said, they don't
5 necessarily result in cost savings, but as the Chair
6 said we get a lot more bang for our buck. We're
7 visible. We're out there. We're doing things. We're
8 showing things that are going on.

9 I think that the SAC thing, the SAC issue
10 is one where there are a lot of different
11 constituencies involved, as can be evidenced by the
12 number of letters that we received just on the
13 regional office issue which was generated in large
14 part by the SACs. And that if we were to see if we
15 could provide one year provisional rechartering of all
16 those veteran line to get those out of the way, we
17 could engage in a much more fully integrated and
18 deliberate process of looking at SAC reforms that,
19 quite frankly, may end up with the same result that
20 you folks want but from my point of view has more
21 integrity in the process such that I won't be writing
22 a 500 page dissent.

23 COMMISSIONER BRACERAS: I'm not opposed to
24 what you're saying, but what I would like to do is
25 hear from the Staff Director, I would like to hear

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1 from Ken on what he thinks and the pros and cons of
2 doing it both ways.

3 CHAIRMAN REYNOLDS: Okay. Well, before
4 Ken goes, I'd like to jump in.

5 It seems to me that the selection
6 criteria, that there are not many unknowns left on
7 that particular issue. The issue has been discussed
8 amongst the Commissioners. We have had a slue of
9 letters from members of SACs and from members of
10 Congress. So there, I don't anticipate with this
11 process that we set forth additional information to be
12 provided on the selection criteria issue. And that's
13 why I believe that that issue should be voted on
14 today.

15 Will it entail a delay? The answer is
16 yes, but I think it's worth it. I don't believe that
17 the additional inconvenience that's generated because
18 of a change in our selection criteria, I don't think
19 it outweighs the importance of the issues.

20 And so that we are clear, the issues and
21 what we want to do is to increase and expand the
22 diversity of ideas that we get from our SAC
23 membership. And we believe that this change will
24 result in an increased diversity in ideas. And also
25 it's also a reaction to a notion of proportional

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1 representation that's in our current rules.

2 So Vice Chair Thernstrom?

3 VICE CHAIR THERNSTROM: I am rather
4 sympathetic to the process argument that Commissioner
5 Yaki is making. And I wonder if the one year, if we
6 need a year here for the rechartering and how long we
7 can envision working group; when might it come in with
8 its findings and how expeditiously could we act upon
9 its recommendations so that we can satisfy the
10 concerns of the Chair and the concerns of Commissioner
11 Yaki both.

12 COMMISSIONER TAYLOR: I want to hear the
13 answer before I say anything.

14 CHAIRMAN REYNOLDS: Well, I guess my
15 response is it really depends on how it's structured.
16 If we're going to go down this road, it seems to me
17 that I would the selection issue to be dealt with
18 first so that we can get whatever additional input
19 we'll get and so that we can vote on it as soon as
20 possible. Now how much time that requires, I don't
21 know.

22 STAFF DIRECTOR MARCUS: My concern would
23 be to get State Advisory Committees moving as quickly
24 as possible and doing their work as soon as we can.
25 So from the point of view of making sure that the

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1 State Advisory Committees are effective instruments,
2 my hope would be that we very quickly can either
3 charter or recharter them. There's already been, of
4 course, a significant amount of time.

5 I would imagine that the answer to how
6 quickly could this be done is that the soonest that we
7 could get a recommendation from the working group
8 would be in time for the September meeting, depending
9 on the amount of either deliberation that the working
10 group wanted to do or gathering of input. So there is
11 some question. If the working group were going to do a
12 lot of discussions with other groups, factfinding, it
13 would take a significant amount of time. But the
14 shortest possible would be in time for the September
15 meeting.

16 VICE CHAIR THERNSTROM: Well if it's in
17 time in fact for the September meeting. then we have
18 lost nothing by going along with Commissioner Yaki's
19 recommendations, it seems to me. But --

20 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

21 COMMISSIONER KIRSANOW: Yes. I think I'm
22 sympathetic toward what Commissioner Yaki raised
23 conjoined with a need for being as expeditious as
24 possible.

25 And I think what I would like to see is if

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1 the working group on reform is going to convene and
2 address certain issues relates to SACs, then the
3 matter of membership be the first thing placed on the
4 agenda, that be considered and reported back to the
5 Commission as soon as September. We're not
6 reinventing or building the space shuttle here. But I
7 think we've had some preliminary discussions on this.

8 And I think Commissioner Yaki's right that for a
9 variety of different reasons, some of which are
10 political, some of which are substantive in terms of
11 how we go forward with this Commission, it makes sense
12 to bring in some input from the SACs also. Also from
13 the standpoint of transparency. But if we defer this
14 for at last month, and I don't see there being a great
15 downside.

16 Commissioner Yaki's probably correct that
17 it's not going to change anything. But I think
18 process and the ability to participate on the part of
19 SACs, at least a need to have input, is important.

20 Does this make any sense?

21 COMMISSIONER BRACERAS: I'm just confused.

22 Because it sounded like what Commissioner Yaki was
23 proposing was more than a one month delay, am I
24 correct? Or would a one month delay satisfy your
25 concern?

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1 CHAIRMAN REYNOLDS: If we're saying that
2 by adopting at least portions of Commissioner Yaki's
3 recommendations that it will result in a one month
4 delay, that's one thing.

5 COMMISSIONER BRACERAS: I guess I want
6 some clarification from both Commissioner Yaki and
7 then again, I'd like some more input from the Staff
8 Director. Because the Staff Director and the people
9 of the staff are the ones that work with the SACs on a
10 regular basis. So I want input from the Staff Director
11 on this.

12 I thought that Commissioner Yaki was
13 proposing a one year return rate of the vote that we
14 already have while the working group discusses all of
15 these things. So that it would be basically a year
16 long time period in which we would just go forward
17 with, I guess, the current place? That's how I
18 understood his proposal. Maybe I'm wrong.

19 COMMISSIONER YAKI: Commissioner Braceras,
20 I don't think that it's clear yet.

21 COMMISSIONER BRACERAS: Okay. Well, I'm
22 asking. I'm asking Commissioner Yaki to clarify and
23 I'm asking the Staff Director to tell us his view.

24 VICE CHAIR THERNSTROM: Well, but in any
25 case, Jennifer, whatever your initial proposal of

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1 Commissioner Yaki, it seems to me --

2 COMMISSIONER BRACERAS: No, I understand
3 that.

4 VICE CHAIR THERNSTROM: -- we're not
5 locked into the one year.

6 COMMISSIONER BRACERAS: I understand that.
7 I'm trying to understand if a shorter time period
8 satisfies his concerns or not.

9 COMMISSIONER YAKI: Commissioner Braceras,
10 this is Commissioner Yaki.

11 I put out the one year simply because it
12 sounded good, for lack of a better word. But
13 seriously the issue is I believe that taking on the
14 rechartering, taking on a whole new look at the State
15 Advisory Committees, especially in the manner that you
16 have suggested and others have suggested or hinted at
17 as well, is something that I don't believe can or
18 should be done in a hurry. Just as it took the
19 working group on rules several months minimum to come
20 up just with changing the rules of how this Commission
21 behaves and puts out reports, here we're dealing with
22 a congressionally mandated part of the duties and
23 powers of the Civil Rights Commission.

24 COMMISSIONER BRACERAS: No. I understand
25 the concern.

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1 COMMISSIONER YAKI: So all I was saying
2 is by one year I was trying not to give too long a
3 time line, but at the same time I didn't also want to
4 create artificial deadlines given that this is
5 serious, this is important. And we're dealing with a
6 situation involving SACs in states where they may or
7 may not have significant political contacts and
8 support, this process is going to have to be done I
9 think deliberately, delicately and in a way that best
10 shows the process that you helped put -- reforms that
11 you helped put together, Commissioner Braceras, is
12 followed in other areas as well.

13 And so when someone says well we can rush
14 through the selection criteria in one month, I think
15 okay, I think we have a briefing in September. We've
16 already had problems with combining briefings and
17 meetings already --

18 COMMISSIONER BRACERAS: So you don't think
19 that --

20 COMMISSIONER YAKI: I'm just saying
21 practically -- I was trying to be practical in giving
22 it an outside time limit. And if the working group
23 came back sooner, I think people would just have to
24 judge whether they thought and how fast they came back
25 whether they did an adequate job or not. I just

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1 wanted to put an outside time line as a compromise
2 just to get this thing rolling. And that's where I
3 am.

4 COMMISSIONER BRACERAS: Can I hear from
5 the Staff Director?

6 VICE CHAIR THERNSTROM: Commissioner
7 Taylor has something he wanted to ask.

8 COMMISSIONER BRACERAS: Oh, I'm sorry. I
9 can't see that.

10 CHAIRMAN REYNOLDS: Okay. Commissioner
11 Taylor?

12 COMMISSIONER TAYLOR: If you could, I
13 would be very impressed.

14 COMMISSIONER YAKI: Get those little Apple
15 video things and just turn it around.

16 COMMISSIONER TAYLOR: Right.

17 I, too, am very sympathetic to the process
18 concerns. I do, however, see a significant difference
19 between the large body making a decision relative to
20 the selection criteria and the issues that are
21 proposed to be worked on by the working group, which I
22 view as more mechanical in how the working groups
23 relate to the Commission. These are all important
24 issues, but I think they are very different. Because
25 I know that I'm not the only Commissioner that has

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1 been concerned about the overall approach in
2 ensuring that, as our Chair has stated, we get a
3 diversity of views from the SACs. And I view that as
4 the issue we would be addressing if we were to vote on
5 these other motions, which again I view as different
6 from how the SACs interact with the Commission which
7 appears to be really the point of the working group.

8 Having said that, I would not be opposed
9 to some compromise. I think a year is too long. I
10 would not be opposed to an outside date of five or six
11 months with the expectation that our working group is
12 going to come back. And I would expect it to come
13 back in a few months, possibly four months. So I would
14 not be opposed to that if that were a workable
15 compromise and we were all committed to making sure
16 that the working group came back with recommendations
17 that we indeed voted on in that time period to include
18 criteria, term limits and all the other mechanical
19 issues addressed in our motion here.

20 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

21 VICE CHAIR THERNSTROM: I'd like to come
22 up with a compromise as well. And, again, I think the
23 Staff Director's got a bunch of questions on his plate
24 to answer. I'm not sure why this has to be a total
25 package, why we can't break this into separate pieces

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1 and the working group move much more quickly on the
2 issues that we are postponing today, which is the
3 issue of the membership. Because for many of us the
4 lack of diversity on the SACs is very important.

5 So one of the questions is can we break
6 the work of the working group into separate parts and
7 have them come back more quickly on the question of
8 the membership?

9 CHAIRMAN REYNOLDS: Well, it seems to me
10 that the flash point has been the proposal to change
11 the membership criteria. And we've had lots of input
12 on that particular issue. I don't think that there's
13 anyone who objects to the notion of increasing the
14 diversity of views and skills. I believe it was the
15 balancing in terms of race, ethnicity and whatever
16 effect. That is the flash point in my view.

17 And so, Commissioner Yaki, do you believe
18 that further discussions on that issue is likely to
19 yield useful information?

20 COMMISSIONER YAKI: I do. I do for a
21 couple of reasons.

22 One, I believe at the conference call with
23 the SACs, was I the only Commission present along with
24 you? You know, just with the SAC chairs. Was anyone
25 else --

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1 CHAIRMAN REYNOLDS: I think that another
2 Commission may have been on.

3 COMMISSIONER TAYLOR: I was on there.

4 COMMISSIONER YAKI: I think it's important
5 that the other Commissioners hear what's been said.

6 Number two is that because it was done in
7 the context of a very rush basis, from what I've been
8 told there are SAC chairs who would have a more
9 analytical or quantitative presentation that they
10 would want to make to the Commission that should help
11 illuminate and maybe address some of the concerns
12 involved in selection criteria.

13 So I think that there is merit to it. If
14 it's the Commission's will to push it to September,
15 you know I would take that over doing it today. I just
16 think that there's an overall package here to what
17 we're trying to do. And as much as I respect
18 Commissioner Taylor, I think that the issues involved
19 in the working group are not nearly mechanical. Not
20 especially if I read what Commissioner Braceras has
21 been talking about in terms of content control or
22 content format; that is not a mechanical issue.

23 COMMISSIONER BRACERAS: Yes, but nobody's
24 talking about doing that today.

25 COMMISSIONER YAKI: No. No one is talking

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1 about doing it today. But I was just addressing
2 Commissioner Taylor's remarks that the working group
3 on SAC reform, I presume, that would take up that
4 issue that you would raise, correct?

5 COMMISSIONER BRACERAS: Yes, I suppose it
6 would.

7 COMMISSIONER YAKI: So therefore it's a
8 content which are more than mechanical.

9 COMMISSIONER BRACERAS: But that wouldn't
10 preclude it from discussing the --

11 CHAIRMAN REYNOLDS: Well, how about this?
12 I detect a consensus that we need to work out some
13 type of compromise to address the concerns expressed
14 by Commissioner Yaki. What do you think of having a
15 vote on the membership criteria in, say, October? And
16 if need be, if we believe that it was necessary to
17 have two meetings during October; one for regular
18 business and if you wanted to, and this is addressed
19 to you, Commissioner Yaki, especially but we could
20 have a separate meeting. We can come in and have a
21 meeting on a Thursday and a Friday. Because
22 apparently this is a very important issue. And by
23 that time the SAC members who are putting together
24 different analyses would have an opportunity to
25 provide it to us, and we can discuss it.

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1 VICE CHAIR THERNSTROM: Can we hear from
2 the Staff Director on this whole thing?

3 CHAIRMAN REYNOLDS: Sure.

4 STAFF DIRECTOR MARCUS: Certainly. I
5 don't know that I have a whole lot to add beyond the
6 points that have already been mentioned.

7 I suppose there are two points on timing
8 worth keeping in mind. One is that the motion to
9 change selection criteria, if it's made whenever it
10 would be made, would presumably be a motion that would
11 entail sending proposed criteria to the *Federal*
12 *Register* for notice and comment, which would commence
13 a period of public comment and discussion, after which
14 the Commission would have the ability to review the
15 public comment and make a final decision. So the
16 vote, whether it's made now, September or October,
17 would not necessarily be the end of the discussion but
18 rather the beginning of a public phase of comment.

19 And the second point that I would make is,
20 and I don't know to what extent the Commissioners will
21 be concerned to keep this in mind or not, but we do
22 currently have the benefit of an ongoing government
23 accountability audit that focused in significant part
24 on the SAC process. If the SACs were rechartered
25 sooner rather than later while the audit is ongoing,

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1 that we might have the benefit of comments from the
2 auditors on the new process, which would be in place,
3 as opposed to the alternative which is that we're
4 still in the process of changing things at the time
5 that the audit is completed. So that timing issue
6 might also play in Commissioners' considerations.

7 VICE CHAIR THERNSTROM: I have a question.

8 COMMISSIONER BRACERAS: So, Ken, what is
9 your preference besides when we vote on the selection
10 criteria portion?

11 STAFF DIRECTOR MARCUS: Well, what I would
12 say is that sooner rather than later is more helpful
13 in terms of getting the State Advisory Committees
14 going and having them do their work and getting
15 whatever benefit we can from the ongoing audit.

16 VICE CHAIR THERNSTROM: I have a
17 question.

18 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

19 VICE CHAIR THERNSTROM: So, look, I had
20 not thought about the fact that, of course, we are
21 facing a public phase here and I'm about to perhaps
22 shift my position here. Why is it not possible to
23 vote on the selection criteria today, the membership
24 criteria, go into the public phase, have the working
25 group functioning simultaneously during that public

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1 phase and as part of the package of response that
2 occurs at the end of that public phase, have the
3 working group's findings be part of the response? So
4 that we don't in fact lose anything by voting today a
5 proposed motion to amend the Commission's regulation
6 regarding membership criteria because we've now got
7 this public phase in which the working group can
8 function as well?

9 CHAIRMAN REYNOLDS: I think that that's a
10 good idea. The working group have access to the
11 public comments.

12 Commissioner Yaki?

13 COMMISSIONER YAKI: Based upon having
14 responded to 3,000 public comment requests in the
15 *Federal Register* by agencies of every ilk and stripe,
16 I can tell you that --

17 VICE CHAIR THERNSTROM: What a waste of
18 your time.

19 COMMISSIONER YAKI: -- there is a far, far
20 different view of a regulation promulgated in the
21 *Federal Register* in terms of process, especially
22 regarding the SACs and their relationship to this
23 Commission, than it would be if the SACs were involved
24 at least in the front end in the rule that went out
25 into the *Federal Register*. It is a gigantic

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1 distinction of process. It is a gigantic
2 distinction in terms of how we say to the SACs that we
3 value their input versus simply putting it in the
4 *Register* and saying join the cast of thousands, write
5 us comments, we'll ignore them like every other
6 federal agency does and then approve them in 45 days.

7 COMMISSIONER BRACERAS: But didn't we
8 already seek their input? And so what additional
9 input would we be getting?

10 COMMISSIONER YAKI: But, Commissioner
11 Braceras, what I had said in response to that point is
12 that we did not seek their input in the development of
13 this criteria. The criteria came down and only after
14 they read it and it was headed for the -- I can't
15 remember, June or July -- the July meeting was a
16 conference call put together in a very hurried fashion
17 to try and deal with it. And what I had said earlier
18 is that several SAC chairs have said to me that they
19 did not feel that that gave them adequate time to
20 adequately present more compelling qualitative and
21 quantitative data that might help us, might shift, may
22 not. But at least allow them the time to make their
23 case in a more coherent manner than it would be -- I
24 mean, we'd essentially be repeating the same process
25 by proving it to the *Federal Register*, which is okay,

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1 we approve it top down. Sorry about that. You got
2 one phone call with us. Goes to the *Federal Register*.

3 You got 45 days to comment back on it. And the
4 chances of us making any change at that and then back
5 and reposting it all over again, which would be even
6 more time consuming, I think is nil.

7 COMMISSIONER BRACERAS: I mean, I'm
8 certainly willing to listen to whatever data and
9 argument they can muster. However, my initial support
10 for the motion, for the proposed motion is my reading
11 of the law and not having a quota system in place. So
12 they might want to consider addressing their comments
13 to that because that is one of the reasons I think it
14 is necessary a rule change in addition to the fact
15 that I think it's just good practice to have a wider
16 array of ideological viewpoints on the SACs.

17 COMMISSIONER YAKI: Just to respond. The
18 quota system, as you referred to, was an
19 administration instruction not in the *Federal Register*
20 regulation that we have been following for years.

21 CHAIRMAN REYNOLDS: Well, I wouldn't
22 restrict Commissioner Braceras' argument to the
23 existence of a quota. Just the use of a racial
24 classification. That for me is the issue.

25 COMMISSIONER BRACERAS: Yes, I agree with

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1 the Chair. And whatever you want to say is that --

2 COMMISSIONER YAKI: Well, we can have a
3 good fight about that in a few minutes.

4 CHAIRMAN REYNOLDS: Commissioner Taylor?

5 COMMISSIONER TAYLOR: Where are we in the
6 process? Because I'd like to make a substitute
7 motion, if I can. I think we're in the discussion
8 phase.

9 CHAIRMAN REYNOLDS: Yes.

10 COMMISSIONER TAYLOR: So I'd like to make
11 a substitute motion. Okay. I think I can do that
12 under *Robert's Rules*.

13 CHAIRMAN REYNOLDS: Yes, you can. Yes.

14 COMMISSIONER TAYLOR: I thought I could.

15 Let me propose that we combine the motions
16 related to modifying our selection criteria and term
17 limits, and add that to the agenda of the working
18 committee with a specific charge, however, that the
19 working committee back with specific recommendations
20 on those two points that we will vote on in our
21 October meeting. That will allow us to then trigger
22 the public comment period. Having been a part of the
23 conference call with some of the SAC chairs, I sensed
24 their frustration with the shift which, while I
25 disagreed with, I could sense their frustration

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1 nevertheless. And I want to give them an
2 opportunity to present some more cogent arguments than
3 they were able to present just given the short time
4 frame. So I think that's a fair request.

5 COMMISSIONER YAKI: I'll second that.

6 COMMISSIONER TAYLOR: And that would be my
7 recommendation with the specific charge that we vote
8 on this in October.

9 COMMISSIONER YAKI: I'll second it.

10 CHAIRMAN REYNOLDS: Any other comments?

11 All in favor?

12 ALL: Aye.

13 CHAIRMAN REYNOLDS: All in opposition?
14 Okay. The substitute motion passes unanimously.

15 Okay. So we have made --

16 COMMISSIONER TAYLOR: Don't we need to
17 establish the members? Has that been established?

18 CHAIRMAN REYNOLDS: Oh, a good point.

19 I assume that, Commissioner Yaki, you
20 would want to be involved?

21 COMMISSIONER YAKI: I'm the only -- in
22 this entire thing?

23 VICE CHAIR THERNSTROM: You're going to be
24 on every working group we have, unless you can find
25 some --

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1 COMMISSIONER YAKI: I'm hitting that
2 hour limit real fast.

3 VICE CHAIR THERNSTROM: Oh, we all are.

4 CHAIRMAN REYNOLDS: In fact, I think that
5 we need to check to make sure that we're not bumping
6 up or maybe --

7 COMMISSIONER TAYLOR: We're getting very
8 close to the end of fiscal year.

9 COMMISSIONER YAKI: Well, my hours weren't
10 prorated for the entire year. Were they or were they;
11 I don't know.

12 CHAIRMAN REYNOLDS: Is it done by hours or
13 days?

14 STAFF DIRECTOR MARCUS: It's for the full
15 year. It's hours for the full year, and staff is
16 putting together a report on the number of hours that
17 Commissioners have reported to us that they have spent
18 and the number of hours left. So we can distribute
19 that when it's prepared.

20 CHAIRMAN REYNOLDS: Great. Because every
21 time I do a time sheet I get a little nervous.
22 Because I have no idea how close I am.

23 VICE CHAIR THERNSTROM: Yes. Well, I'm in
24 the same position.

25 COMMISSIONER TAYLOR: Well, there should

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1 be an understanding. Because I've had that same
2 thought. It was my assumption, maybe we should make
3 this clear, that to the extent a Commissioner submits
4 time in excess of the 600 hours, as I recall the
5 number being, that we're doing so only for purposes of
6 establishing for the record that we were working on
7 behalf of the Commission with not the expectation that
8 we would be compensated.

9 VICE CHAIR THERNSTROM: No, you can't do
10 that.

11 COMMISSIONER TAYLOR: Okay.

12 STAFF DIRECTOR MARCUS: I would advise
13 against that for the reason that our statute prohibits
14 Commissioners from providing uncompensated service.

15 COMMISSIONER TAYLOR: Okay. Well, I'm
16 glad I asked the question. I thought you were supposed
17 to do that. Okay.

18 VICE CHAIR THERNSTROM: No.

19 COMMISSIONER TAYLOR: Okay. Just to keep
20 the record straight. Okay. All right.

21 VICE CHAIR THERNSTROM: No. You have to
22 cheat yourself.

23 COMMISSIONER TAYLOR: Okay.

24 VICE CHAIR THERNSTROM: We have to keep
25 you--

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1 COMMISSIONER TAYLOR: I apologize.

2 Never mind.

3 CHAIRMAN REYNOLDS: Okay.

4 COMMISSIONER TAYLOR: I don't understand
5 that, but that's --

6 CHAIRMAN REYNOLDS: Will someone help me
7 with my train of thought here; where were we? Okay.

8 Commissioner Yaki, I'd like to be
9 involved. Volunteers? Okay --

10 COMMISSIONER BRACERAS: Well, I guess I'm
11 going to recommend, I guess, I mean Staff Director a
12 member of the committee?

13 CHAIRMAN REYNOLDS: Well, the Staff
14 Director participates in all subcommittees.

15 COMMISSIONER TAYLOR: I'll do it.

16 CHAIRMAN REYNOLDS: So that's Commissioner
17 Yaki, Reynolds and Taylor. One more?

18 COMMISSIONER BRACERAS: I'll do it.

19 CHAIRMAN REYNOLDS: Very good.

20 COMMISSIONER BRACERAS: Unless somebody
21 wants to.

22 CHAIRMAN REYNOLDS: Well, I see Pete is
23 chomping at the bit at this.

24 VICE CHAIR THERNSTROM: So am I.

25 CHAIRMAN REYNOLDS: Okay. All right.

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1 Where are we? Okay. We can skip that motion.

2 Okay. Am I correct in that we're up to future
3 briefings?

4 COMMISSIONER YAKI: What happened to the
5 motions at the beginning of the packet that we have?
6 Are we going to deal with those?

7 CHAIRMAN REYNOLDS: What topics?

8 COMMISSIONER YAKI: Number of briefings
9 and hearings and the --

10 VICE CHAIR THERNSTROM: Well, that's what
11 we're up to.

12 COMMISSIONER YAKI: Okay.

13 VICE CHAIR THERNSTROM: It got re-ordered,
14 I think.

15 CHAIRMAN REYNOLDS: Yes, that's coming.

16 COMMISSIONER YAKI: Okay. Thank you.

17 COMMISSIONER BRACERAS: I'm sorry. I need
18 to be off the phone in about 20 minutes.

19 CHAIRMAN REYNOLDS: Okay.

20 COMMISSIONER BRACERAS: I just wanted to
21 let you know.

22 **VIII. Future Briefings**

23 CHAIRMAN REYNOLDS: Okay. I hope that we
24 can get through this in 20 minutes, but we'll see.

25 Okay. Mr. Staff Director, do you have an

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1 update on future briefings?

2 STAFF DIRECTOR MARCUS: Certainly, Mr.
3 Chairman. I'd be pleased to provide an update as to
4 the status of briefings previously approved by the
5 Commissioners.

6 I think many have indicated to me that
7 they agree that the briefing on the Stagnation of the
8 Black Middle Class was a success. Staff is preparing
9 a report on the briefing, which we hope to have ready
10 by the next Commission meeting in September. The
11 briefing report will consist of an executive summary,
12 the written statement of the panelists and written
13 comments from the Chairman and Commissioner Yaki.

14 The next briefing scheduled for the
15 Commission is a briefing on the Patriot Act as it
16 relates to alleged acts of anti-Muslim and anti-Arab
17 discrimination.

18 At a recent Commission meeting staff were
19 asked to make some changes to the concept paper
20 regarding this briefing. That concept paper as
21 amended has been distributed and there will be a
22 motion concerning it shortly.

23 Assuming that it is approved, the briefing
24 will go as described in that concept paper. It's
25 scheduled for September 16, 2005.

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1 So far Mr. Parvez Ahmed of the National
2 Council for American-Islamic Relations and Andrew
3 McCarthy, Senior Fellow at the Foundation for Defense
4 of Democracies and former Assistant United States
5 Attorney for the Southern District of New York have
6 agreed to speak at the briefings.

7 We have extended invitations to the
8 Federal Bureau of Investigation and to current and
9 former officials of other components of the Department
10 of Justice, but have not yet received definitive
11 responses from these invitees yet.

12 COMMISSIONER YAKI: Mr. Staff Director, I
13 just want to add that the President of the Arab
14 American Anti-Discrimination Committee, former
15 Congresswoman Mary Rose Oakar is interested in
16 appearing at the briefing as well.

17 STAFF DIRECTOR MARCUS: Thank you. That is
18 news to me. Delighted to hear of her interest. She,
19 of course --

20 COMMISSIONER BRACERAS: We've had her in
21 the past.

22 COMMISSIONER YAKI: Yes.

23 STAFF DIRECTOR MARCUS: She addressed, I
24 think, the Patriot Act at our last briefing.

25 COMMISSIONER BRACERAS: Yes.

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1 STAFF DIRECTOR MARCUS: We have also
2 begun planning on the November briefing on campus
3 anti-Semitism based on the speaker list set forth in
4 the concept paper previously approved by the
5 Commission. I will be able to provide more
6 information on this in September.

7 CHAIRMAN REYNOLDS: Okay. Any questions?
8 Additional questions or comments?

9 All right. The next issue deals with the
10 number of briefings and hearings conducted by the
11 Commission. The motion reads "The Commission will
12 adopt a new policy of issuing only one major national
13 report each year and of shifting the available
14 resources to conduct the greatest feasible number of
15 briefings and hearings.

16 The Commission has customarily drafted
17 approximately three to four major national reports on
18 civil rights issues each year, in addition to the
19 State Advisory Committee reports, briefing reports,
20 and other statements and analyses. These major
21 national reports are often lengthy, time-consuming,
22 and resource-intensive. Since the topics of the
23 reports are often approved two years in advance, the
24 major national reports are not always timely.

25 The Commission's national briefings and

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1 hearing, on the other hand, which may be accompanied
2 by short printed briefing reports, have offered more
3 timeliness and flexibility and do not impose as severe
4 strain on Commission resources. They can address a
5 broader range of civil rights issues and bring a
6 higher profile to them. They are cost effective,
7 requiring much less in terms of staff time and
8 preparation. They are easy to arrange in a short time
9 frame so that they may cover more timely civil rights
10 issues. Timeliness is especially important so that
11 the President, Congress and the public can act on any
12 recommendations that the Commission may make as a
13 result of a briefing or hearing."

14 May I have a motion to increase the number
15 of briefings and hearings conducted by the Commission.

16 VICE CHAIR THERNSTROM: So moved.

17 CHAIRMAN REYNOLDS: May I have a second?

18 COMMISSIONER YAKI: Second.

19 CHAIRMAN REYNOLDS: Discussion?

20 COMMISSIONER YAKI: For the Staff
21 Director. This would require us, this would
22 essentially supersede the process we went through in,
23 was it June when we were picking the enforcement
24 report and the other report, the one that Commissioner
25 Thernstrom was chairing at the end, so ably.

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1 STAFF DIRECTOR MARCUS: Yes. Yes,
2 Commissioner. I think it would be neater to have an
3 additional separate motion on the topic. But as I
4 understand this, it would require that we have only
5 one national report per year, which is the statutorily
6 mandated enforcement report.

7 COMMISSIONER YAKI: Okay.

8 STAFF DIRECTOR MARCUS: And any other
9 reports be converted into briefs or hearings.

10 COMMISSIONER BRACERAS: And do we need to
11 go through that process again and decide which of
12 those to make?

13 CHAIRMAN REYNOLDS: Sure, that and timing
14 issues. Yes, I believe that we have to address this.
15 We have to go back and take a look at the list and
16 see how we're going to reorganize --

17 COMMISSIONER BRACERAS: Well, we'd stick
18 with the same list, we'd just --

19 CHAIRMAN REYNOLDS: Yes.

20 COMMISSIONER BRACERAS: -- choose from
21 that list which will be the statutory report?

22 CHAIRMAN REYNOLDS: That's my hope, unless
23 someone moves to add something or delete something.

24 STAFF DIRECTOR MARCUS: I believe that the
25 Commission made it easier a couple of months ago. As

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1 I recall, there was already a designation of the
2 statutory enforcement reports in 2007.

3 CHAIRMAN REYNOLDS: Yes.

4 COMMISSIONER BRACERAS: Oh, okay. And the
5 other topics will still be covered in the form of
6 briefings. We won't be dropping any topics, in other
7 words?

8 STAFF DIRECTOR MARCUS: That's right. And
9 just for clarification, the Voting Rights Act was
10 designated as the enforcement report for 2006. And I
11 believe that elementary and secondary degradation was
12 selected as the statutory enforcement report for
13 fiscal year 2007.

14 COMMISSIONER BRACERAS: Thank you.

15 CHAIRMAN REYNOLDS: Any other questions or
16 comments?

17 COMMISSIONER YAKI: One question. The
18 briefing in October won't supplant the enforcement
19 report?

20 VICE CHAIR THERNSTROM: No.

21 COMMISSIONER YAKI: Okay.

22 VICE CHAIR THERNSTROM: That's correct.

23 CHAIRMAN REYNOLDS: Okay. All in favor
24 say aye.

25 ALL: Aye.

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1 CHAIRMAN REYNOLDS: All in opposition.

2 The motion passes unanimously.

3 COMMISSIONER TAYLOR: Mr. Chair?

4 CHAIRMAN REYNOLDS: Yes.

5 COMMISSIONER TAYLOR: Just one question. I
6 apologize for asking this, but I just don't remember
7 the discussion as to the Patriot Act, how it appeared
8 on the radar. Did the Commission have a particular
9 interest?

10 COMMISSIONER YAKI: Me.

11 COMMISSIONER TAYLOR: Oh, okay. Okay.
12 All right. I just wanted to make sure I -- I just
13 didn't have a --

14 CHAIRMAN REYNOLDS: I just want to point
15 out this privileged position that Mr. Yaki has in that
16 one of the nice things about how we work -- well, the
17 reconstituted Commission, I think, is just doing an
18 excellent job. I think that you make very good points
19 and I think that despite the fact that we do have so
20 me fundamental differences, I think that we've done a
21 good job of trying to work through our differences.
22 And I've said this in the past, and I'll probably say
23 it again. It just amazes me at the commonality that we
24 have now. And, you know, I think that we do a very
25 good job of --

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1 COMMISSIONER KIRSANOW: We had comedy
2 before, too; spelled differently.

3 CHAIRMAN REYNOLDS: Well, I guess we need
4 to define our terms.

5 VICE CHAIR THERNSTROM: I thought that was
6 spelled C-O-M-E-D-Y.

7 CHAIRMAN REYNOLDS: Okay.

8 VICE CHAIR THERNSTROM: Well, let me add
9 something to that. I think you're perfectly aware
10 that all Commissioners with the exception of
11 Commissioner Yaki would have postponed the briefing on
12 the Patriot Act until we --

13 COMMISSIONER YAKI: 2010.

14 VICE CHAIR THERNSTROM: No. No. But until
15 we at least had some new information. I mean, there
16 have been a series of hearings now on the Patriot Act.
17 We're adding another. I would have had preference for
18 waiting until we see how the reauthorization of the
19 act, the reauthorization amendment of the act plays
20 out and so forth. But you felt very strongly about
21 having it now.

22 COMMISSIONER YAKI: I appreciate that.

23 VICE CHAIR THERNSTROM: And we have all
24 felt that it is important to respond to your
25 preference here.

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1 COMMISSIONER YAKI: Thank you.

2 CHAIRMAN REYNOLDS: Okay. Next. The next
3 motion is --

4 COMMISSIONER YAKI: Adjourn?

5 CHAIRMAN REYNOLDS: Yes.

6 COMMISSIONER TAYLOR: No, no. Don't
7 listen to him.

8 CHAIRMAN REYNOLDS: Okay. The next motion
9 involved converting previous approved reports into
10 briefings.

11 COMMISSIONER YAKI: WE did that.

12 VICE CHAIR THERNSTROM: We just did that,
13 Jerry.

14 CHAIRMAN REYNOLDS: Oh, gees.

15 VICE CHAIR THERNSTROM: The next motion is
16 to hold the briefing on the Voting Rights Act.

17 CHAIRMAN REYNOLDS: Okay.

18 COMMISSIONER YAKI: No, no. We didn't do
19 that one.

20 VICE CHAIR THERNSTROM: Well --

21 COMMISSIONER YAKI: No, we didn't do that.

22 CHAIRMAN REYNOLDS: Well, we sort of did,
23 but we didn't go into the specifics.

24 COMMISSIONER YAKI: No.

25 CHAIRMAN REYNOLDS: Okay. The motion

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1 reads: "I move that the following topics which the
2 Commission decided to address in a future national
3 reports during the Commission's May 13, 2005 meeting
4 be instead addressed in briefings to be held in 2006
5 and 2007. And the topics are: Representation of
6 Minorities in the Census; Assessment of Effectiveness
7 of Historically Black Colleges; School Choice, the
8 Blaine Amendment, and; Anti-Catholicism. And that's
9 one topic. Minority Children in State Foster Care &
10 Adoption.

11 And upon this motion the topics of
12 reauthorization of the temporary provision of the
13 Voting Rights Act and elementary and secondary school
14 desegregation would still be addressed in national
15 reports in 2006 and 2007 respectively."

16 COMMISSIONER TAYLOR: So moved.

17 CHAIRMAN REYNOLDS: Second?

18 VICE CHAIR THERNSTROM: Second.

19 CHAIRMAN REYNOLDS: Discussion?

20 COMMISSIONER KIRSANOW: One question, and
21 I think this was already addressed in previous
22 discussion but I just wanted to be clear on this. If
23 we're converting some of this to briefing, does that
24 have any impact on the budget submission that we made
25 earlier?

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1 CHAIRMAN REYNOLDS: Off the top of my
2 head, I would say no, but I naturally defer to the
3 Staff Director.

4 STAFF DIRECTOR MARCUS: We're going to
5 have to review that and see if further clarification
6 needs to be made to our Appropriations Committees. It
7 may well be since we indicated that we would be doing
8 reports, that we would need to clarify that. But
9 we'll have to review the specific language that was
10 made in our communications to Congress and take
11 whatever are required.

12 VICE CHAIR THERNSTROM: One other question
13 here. It's a little unclear under this motion, "the
14 topics of reauthorization the temporary provision of
15 the Voting Rights Act and elementary and secondary
16 school desegregation would be addressed in national
17 reports." But they are also the subject of briefing;
18 that is not clear from the language of the motion.

19 CHAIRMAN REYNOLDS: Okay.

20 VICE CHAIR THERNSTROM: It really should
21 read, the amendment here, will be --

22 STAFF DIRECTOR MARCUS: I'm sorry, Vice
23 Chair Thernstrom. I'm not sure I entirely heard. I
24 think that you indicated that under the vote that had
25 just been taken, we would be doing Voting Rights Act

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1 as a national report, although we may also have a
2 briefing on it as well. Elementary and secondary
3 desegregation would be the subject of a report --

4 VICE CHAIR THERNSTROM: Of course. Of
5 course. I'm sorry.

6 STAFF DIRECTOR MARCUS: But we had not yet
7 determined whether we will --

8 VICE CHAIR THERNSTROM: Have a briefing.
9 All right. It just needs to be clear. It's not clear.
10 Topics of reauthorization would still be addressed in
11 national reports, that is that topic is in addition a
12 briefing?

13 STAFF DIRECTOR MARCUS: That's right.
14 Elementary and secondary may or may not require an
15 additional hearing or briefing.

16 VICE CHAIR THERNSTROM: Right.

17 CHAIRMAN REYNOLDS: Okay. Where are we?
18 Have we voted?

19 VICE CHAIR THERNSTROM: No.

20 COMMISSIONER YAKI: No.

21 CHAIRMAN REYNOLDS: Okay. Additional
22 questions, comments? All in favor say aye.

23 ALL: Aye.

24 CHAIRMAN REYNOLDS: All in opposition?
25 The motion passes unanimously.

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1 Next up motion to hold a briefing on the
2 Voting Rights Act. 2005 marks the 40th anniversary of
3 the enactment of the Voting Rights Act. Debate has
4 already begun on reauthorization of the temporary
5 provisions of the Act due to expire in 2007.
6 Therefore, I move that the Commission hold a briefing
7 on the Voting Rights Act in October. That is the
8 motion.

9 VICE CHAIR THERNSTROM: October 2005?

10 CHAIRMAN REYNOLDS: Yes. Will someone
11 second this motion?

12 VICE CHAIR THERNSTROM: Yes, I second it.

13 CHAIRMAN REYNOLDS: Okay. Discussion?

14 COMMISSIONER YAKI: Yes. I would just
15 request that we ensure that an invitation to appear is
16 extended to the National Voting Rights Act Commission,
17 a nonprofit group that's been going around the country
18 holding hearings on this.

19 VICE CHAIR THERNSTROM: Sure. Sure.

20 CHAIRMAN REYNOLDS: Okay. Any additional
21 comments? Okay.

22 All in favor?

23 ALL: Aye.

24 CHAIRMAN REYNOLDS: All in opposition. The
25 motion passes unanimously.

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1 Okay. Next up is a motion to approve a
2 revised scope for the Patriot Act and Anti-Arab and
3 Anti-Muslim Intolerance. Okay. Here is the motion.
4 "I move that the scope of the Patriot Act and the
5 Anti-Arab and Anti-Muslim Intolerance briefing examine
6 alleged incidents of anti-Arab and anti-Muslim
7 backlash following 9/11. Prior Commission action
8 addressed whether efforts to combat terrorism and
9 secure our homeland affect immigration policies,
10 increase our concerns about racial/ethnic profiling or
11 raise issues of selective enforcement of laws
12 infringing on civil rights and civil liberties,
13 detention policies, access to counsel, and the use of
14 military and executive authority. This briefing would
15 address sections 215 and 505 of the Patriot Act, as
16 well as specific practices of the FBI under the
17 Patriot Act and/or other actions under color of law in
18 detaining and/or questioning Arab-Americans and
19 American Muslims. Section 215 provides that FBI
20 personnel may apply for a court order requiring the
21 production of business records relevant to an
22 investigation concerning international terrorism or
23 clandestine intelligence activities, provided that
24 investigation of a U.S. citizen or a legal permanent
25 resident may not be conducted solely on the basis of

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1 First Amendment protected activities. Section 505
2 authorizes the use of an administrative subpoena of
3 personal records relevant to an investigation
4 concerning international terrorism or clandestine
5 intelligence activities, without requiring probable
6 cause.

7 The Commission will seek information to
8 address the following issues:

9 Testimony identifying discrimination,
10 scapegoating, and profiling of Arab and Muslim
11 Americans in enforcement of sections 215 and 505 off
12 the Patriot Act;

13 Data collected by the Department of
14 Justice on civil rights complaints arising from
15 enforcement of the Patriot Act;

16 And other remedies for potential civil
17 rights problems arising from enforcement of the
18 Patriot Act."

19 The methodology: "The Commission will
20 host a briefing to address the above issues. Speakers
21 may include but are not limited to the following."
22 Speakers that would include the representatives from
23 the appropriate components offices of the Department
24 of Justice such as the Office of Legal Policy, Office
25 of Inspector General, etcetera, including someone

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1 responsible for the Hate Crimes Statistic Act.

2 Speaker from the Federal Bureau of
3 Investigation to describe their action and interaction
4 with the American Arab and Islamic communities; and

5 Georgetown Law Professor Viet Dinh.

6 Okay. The list is not over.

7 And also a speaker from the Arab American
8 Anti-Discrimination Committee.

9 A speaker from the Council on American-
10 Islamic Relations.

11 A resident of Lodi, California.

12 The briefing would last approximately 90
13 to two hours with four to six speakers allotted 10 to
14 15 minutes each, and the remaining time allotted for
15 questions. The projected costs would range from
16 approximately \$3600 to \$4500.

17 Questioned that dollar figure. Is that
18 staff time or does that include -- is that out-of-
19 pocket expense?

20 STAFF DIRECTOR MARCUS: That is out-of-
21 pocket.

22 CHAIRMAN REYNOLDS: Okay. That is the --

23 STAFF DIRECTOR MARCUS: And I would
24 clarify that there were some people on this list who
25 already invitations are extending. They may not be

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1 able to come to the event. And that Mr. McCarthy has
2 also been invited.

3 CHAIRMAN REYNOLDS: Okay.

4 COMMISSIONER BRACERAS: I need to go, so
5 I'd like to call the motion.

6 VICE CHAIR THERNSTROM: I just have one
7 question, Jennifer. Why have we listed in this motion,
8 why we have got this sentence "Speakers may include
9 but not limited to the following?" Is there some
10 point to this list? Because I would really prefer
11 that the staff director work out the list of speakers
12 in response to the availability of people and have a
13 great deal of flexibility.

14 CHAIRMAN REYNOLDS: Okay.

15 VICE CHAIR THERNSTROM: So that I would
16 prefer that that whole --

17 COMMISSIONER BRACERAS: I think "may
18 include."

19 VICE CHAIR THERNSTROM: I know it says may
20 include. But it doesn't seem to me to serve much of a
21 point to have this list.

22 COMMISSIONER YAKI: As Jennifer knows,
23 that's pretty standard lawyer-speak for whatever you
24 can think of.

25 VICE CHAIR THERNSTROM: Yes, well I know.

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1 I know. So I'm suggesting that lawyer-speak for
2 whatever you can think of is not a very useful --

3 COMMISSIONER BRACERAS: I'm very sorry. I
4 really do need to hang up.

5 VICE CHAIR THERNSTROM: Agree or disagree,
6 Jennifer, with what I just said?

7 COMMISSIONER BRACERAS: I don't think it
8 matters.

9 VICE CHAIR THERNSTROM: All right.

10 COMMISSIONER BRACERAS: It's a way to
11 phrase is the Staff Director's responsibility.

12 VICE CHAIR THERNSTROM: Okay.

13 CHAIRMAN REYNOLDS: Okay. Unless there
14 are additional comments, this is the last issue before
15 we adjourn. So if there are any additional comments
16 so we can allow Commissioner Braceras to scoot.

17 VICE CHAIR THERNSTROM: She's scooting
18 anyway.

19 CHAIRMAN REYNOLDS: Okay.

20 COMMISSIONER KIRSANOW: I do have one
21 additional comment. I would like to just alert
22 Commissioner Braceras that I would like the Commission
23 to -- I have distributed a little bit of work product
24 here that I'll make a mention of before we adjourn.

25 CHAIRMAN REYNOLDS: Okay.

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1 COMMISSIONER KIRSANOW: Related to the
2 Roberts Supreme Court advocacy record.

3 CHAIRMAN REYNOLDS: Okay.

4 VICE CHAIR THERNSTROM: Well, maybe it can
5 be mailed to Commissioner Braceras.

6 COMMISSIONER KIRSANOW: It will be.

7 CHAIRMAN REYNOLDS: Okay.

8 COMMISSIONER KIRSANOW: Move.

9 CHAIRMAN REYNOLDS: So second?

10 VICE CHAIR THERNSTROM: Second.

11 CHAIRMAN REYNOLDS: Very good. All in
12 favor?

13 ALL: Aye.

14 CHAIRMAN REYNOLDS: All in opposition?
15 The motion passes unanimously.

16 COMMISSIONER BRACERAS: Okay. Got to run
17 everybody. Thank you.

18 ALL: Thanks, Jennifer.

19 CHAIRMAN REYNOLDS: Okay. Thank you.

20 Okay. Commissioner Kirsanow?

21 **IX. Compendium of Roberts's Advocacy Record**

22 COMMISSIONER KIRSANOW: My assistant Chris
23 Jennings --

24 CHAIRMAN REYNOLDS: Has been very busy.

25 COMMISSIONER KIRSANOW: -- at my request

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1 put together the impressive, I consider, a
2 compendium of the briefs and other written material
3 related to the civil rights record of the Supreme
4 Court nominee.

5 It is, without editorial comment, it is
6 simply a compendium of the facts of the case, the
7 issues presented, the briefs he wrote, a summary of
8 his advocacy position and the votes that were taken.
9 And all of them pertain to matters within the
10 jurisdiction of the Civil Rights Commission, that is
11 matters pertaining to race, sex, age, national origin,
12 religion, so and so forth.

13 This is presented to my at my request and
14 for my use. Having review it, I thought it was
15 something that the other Commissioners would be
16 interested in. I think it is the only place that I
17 have seen anywhere in the public domain, at least,
18 where a complete compendium of his advocacy record
19 before the Supreme Court pertaining to civil rights
20 has been put together.

21 In fact, if you take a look at the forward
22 that Chris presented, if you take a look at the table
23 of contents also, but if you take a look at the
24 forward it summarizes fairly adequately, I think, what
25 this is all about. Again, no editorial comment. He

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1 didn't make any observations. This is simply raw
2 data pertaining to Robert's Supreme Court advocacy.
3 You can take it one way or anyway you wish, whether or
4 not you think his advocacy positions were meritorious,
5 whether or not you disagree with them; they're there
6 for review.

7 And I would suggest that maybe this is
8 something that the Commission consider placing on its
9 Web site. And I'm not saying that's something that we
10 talk about today, but I think it's something that
11 satisfies our clearinghouse responsibilities under our
12 charter.

13 CHAIRMAN REYNOLDS: Sure.

14 COMMISSIONER KIRSANOW: And I think if you
15 review it, you'll see that, again, no editorial
16 comment. It's simply what it is. It's one plus one
17 equals two.

18 CHAIRMAN REYNOLDS: And Chris included it
19 appears transcripts.

20 COMMISSIONER KIRSANOW: Yes. As you can
21 see, this is nearly 500 pages long. He spent a lot of
22 time on this collating the data. And it is, again,
23 it's the raw information pertaining to his advocacy
24 record.

25 CHAIRMAN REYNOLDS: Excellent. Excellent.

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1 Good work, Chris.

2 COMMISSIONER YAKI: How you did that and
3 do your bow tie?

4 COMMISSIONER KIRSANOW: I'd like to
5 introduce for the record just the forward for this,
6 and then if the Commissioners wish, maybe at some
7 later point we could vote on whether this should be
8 included on the web site.

9 CHAIRMAN REYNOLDS: Oh no. I think that we
10 should, you know, go through the document over the
11 next few weeks and then make a decision as to whether
12 there's a consensus to put this on the Web site.

13 What I have seen of this looks excellent.
14 It's one-stop shopping here instead of having to go
15 online and trying to get particular documents. This
16 just saves a lot of time.

17 VICE CHAIR THERNSTROM: We'll definitely
18 have a vote on it.

19 CHAIRMAN REYNOLDS: Yes.

20 Once again, excellent work, Chris.

21 VICE CHAIR THERNSTROM: One last bit of
22 business. On the funding federal civil rights
23 enforcement, there are two errors. I know we've
24 already voted on this report. But there are two
25 errors that really need to be corrected.

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1 The first is the first sentence of the
2 introduction, which reads "The year 2005 marks 60
3 years since Congress passed the Voting Rights Act of
4 1965." Sixty years has not passed since 1965. Clearly
5 that has to read 40 years. That needs to be corrected
6 before this goes to press.

7 And the description of Voting Rights Act
8 enforcement is simply incorrect. It leaves out the
9 preclearance function of the Voting Rights section,
10 which is the main business, that is administrative
11 preclearance. And that needs to be included in the
12 description of what the Voting Rights section is
13 responsible for.

14 CHAIRMAN REYNOLDS: Any other changes?

15 Well, it seems to me I don't think there
16 will be any disagreement over the first issue.

17 The second, I suggest that we develop the
18 language, circulate the language and if there are no
19 violent objections to the proposed addition, that we
20 just add it without a vote. If someone has a
21 substantive concern about the language, we try to work
22 out amongst ourselves. And if we're unable to, then
23 we'll have to vote on it.

24 COMMISSIONER YAKI: Yes. That's right.

25 VICE CHAIR THERNSTROM: Good.

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1 CHAIRMAN REYNOLDS: All right. Meeting's
2 adjourned.
3 (Whereupon, the meeting was adjourned at 11:17 a.m.)

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